IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17322 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NATHUBHAI @ NAVINBHAI JIVANBHAI BHALIYA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 17322 of 2003

MR CHETAN K PANDYA for Petitioner No. 1

MR LR PUJARI Ld. AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Mr.L.R.Pujari, learned AGP has placed on record the affidavit in reply on behalf of respondent no.2.

Same is kept on record.

2. Heard Mr.C.K.Pandya, learned advocate for the petitioner and Mr.L.R.Pujari, learned AGP for the respondents.

3. In this petition under Article 226 of the Constitution of India, the detenu - Natubhai @ Navinbhai Jivanbhai bhaliya, through his wife, has been challenging the order of detention dated 29.8.2003 passed by respondent no.2 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and quashing and setting of the said order.

4. The grounds of detention (Page-13) suggest the filing of 3 registered cases against the detenu under the Bombay Prohibition Act. It is stated that the detenu is a bootlegger indulging in the storage and sale of liquor. That the bootlegging activity of the detenu is injurious to the life and the same adversely affects the maintenance of public order.

5. It is stated in the grounds of detention that number of bottles of Indian made english liquor of other states have been recovered from the detenu and that it is necessary to detain the detenu under Section 3(1) of the PASA Act as his activities are against the public health and therefore, adversely affecting the maintenance of public order.

6. It is submitted by Mr.Pandya, learned advocate for the petitioner that the activity of the detenu by itself would not be an obstruction to the maintenance of public order and that besides being bootlegger, the Court has to consider whether there is credible material to conclude that the activities alleged against the detenu is an obstruction to the maintenance of public order or not. It is submitted by Mr.L.R.Pujari, learned AGP that the illegal activity of indulging in the sale of Indian made foreign liquor in the big quantity can have adverse effect on the standard of life and public health, and because of such anti-social activity, the detenu has been a obstruction in the maintenance of public order.

7. In the case of Kanuji S. Zala Vs. State of Gujarat and others, 2000 (4) GLR 3256 in Para.4, it has been observed that, ".... in this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was

harmful to their health. the detaining authority has also stated that the statements of witnesses clearly show that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed in those locality for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and closed their doors.

In Para.5, it is observed that, "What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. .... The observations made by this Court in the case of Om Prakash Vs. Commissioner of Police, 1989 Supp. (2) SCC 576 : AIR 1990 SC 496, that 'as in Piyush Mehta Case, (AIR 1989 SC 491), the material available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act, and as such, the order is liable to be quashed' are to be understood in the context of the facts of that case."

In para.6, it is observed that, "As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record , it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

8. Mr.Pandya has referred to the decision of the Division Bench in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 wherein the Division Bench in Para.4 has reproduced the observations in Para.5 by the Supreme Court in the case of Kanuji S. Zala (Supra). The Division Bench observed that, "observation cannot be picked in isolation but the order has to be read as a whole and reading the decision as a whole, it was necessary for the Court to consider the

presence of credible material before the detaining authority has been insisted upon. The litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. It has been observed that, "the judgement is to be read as a whole and even the observations which have been made by the Supreme Court in Para.6 of the judgement are to be considered in light of the earlier observations made in Para.5 where the presence of credible material before detaining authority has been insisted upon."

9. In the instant case, except the statement in grounds of detention, there is no credible material before the detaining authority on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity of the detenu on the maintenance of public order. In the case of Kanuji S. Zala (Supra) as observed in Para.4 that statement of witnesses before the detaining authority clearly showed that the even tempo of public life was disturbed in those localities for some time and the material on record also showed that members of the public of those locality had to run away from there or to go inside their houses and closed their doors and in light of this evidence, the Supreme Court held that it cannot be said that the satisfaction of the District Magistrate in this behalf was not reasonable or no such material in the present case appears to have been placed before detaining authority so as to draw a reasonable inference as regards the adverse effect on the maintenance of public order.

10. Since this petition can be decided only on the point of obstacle to the maintenance of public order by the bootlegging activities of the detenu in light of above referred decisions of the Supreme Court, in my opinion, other contentions raised by the detenu are not required to be gone into.

11. Under the circumstances, the impugned detention order is liable to be quashed and set aside and petitioner set at liberty.

12. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 29.8.2003 (Annexure-A) passed by respondent no.2 against the detenu -Nathubhai @ Navinbhai Jivanbhai Bhaliya is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)